

Calendar No. 610

104TH CONGRESS
2D Session

S. 1986

A BILL

To provide for the completion of the Umatilla
Basin Project, and for other purposes.

SEPTEMBER 16, 1996

Reported with an amendment

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2D SESSION**S. 1986**

To provide for the completion of the Umatilla Basin Project, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 1996

Mr. HATFIELD introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

SEPTEMBER 16, 1996

Reported by Mr. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To provide for the completion of the Umatilla Basin Project,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 ~~SECTION 1.~~ This Act may be referred to as the
4 ~~“Umatilla Basin Project Completion Act”.~~

5 ~~SEC. 2.~~ Title II of Public Law 100-557 is amended
6 by adding at the end thereof:

1 “AUTHORIZATION OF PROJECT COMPLETION

2 “SEC. 214. For purposes of completing the Columbia
3 River water exchanges and other mitigation efforts nec-
4 essary to restore the Umatilla River basin fishery, and to
5 provide for the expansion of Umatilla basin project district
6 boundaries, the Secretary of the Interior (hereinafter re-
7 ferred to as the Secretary), acting pursuant to the Federal
8 reclamation laws (Act of June 17, 1902, and Acts amend-
9 atory thereof and supplementary thereto), is authorized to
10 complete construction and to operate and maintain the in-
11 tegrated Umatilla River basin project, including pump ex-
12 change projects known as phases I, II, and III.

13 “UMATILLA RIVER PHASE III EXCHANGE

14 “SEC. 215. (a)(1) The Secretary is hereby authorized
15 to construct a third and final phase of the Umatilla River
16 basin project to provide additional flows in the Umatilla
17 River for anadromous fish through a water exchange with
18 Westland Irrigation District.

19 “(2) Prior to construction, the Secretary shall com-
20 plete a feasibility study to identify alternatives within the
21 authorized ceiling to provide Westland Irrigation District
22 exchange flows of approximately 220 cubic feet per second,
23 or greater.

24 “(3) The feasibility study for the phase III exchange
25 facilities shall include an analysis of inclusion of other
26 irrigators in the exchange, appropriate backup systems,

1 water conservation opportunities, and such other analyses
2 as the Secretary may deem appropriate to improve the ex-
3 change project for fishery restoration purposes.

4 “(4) Prior to completion of phase III facilities, the
5 Secretary shall negotiate and execute an exchange agree-
6 ment with the Westland Irrigation District and any other
7 participating irrigators to allow the use of Columbia River
8 water in exchange for an equal amount of Umatilla River
9 or McKay Reservoir water: *Provided*, That the irrigation
10 districts shall continue to be eligible to receive the same
11 volume of water as they received under their respective
12 contracts with the Bureau of Reclamation dated July 6,
13 1954 for Hermiston Irrigation District, November 18,
14 1949 for Stanfield Irrigation District, July 6, 1954 for
15 West Extension Irrigation District, and November 18,
16 1949 for Westland Irrigation District.

17 “(5) Phase III facilities may pump Columbia River
18 water for exchange purposes only, and not for conjunctive
19 use.

20 “(b) OPERATION OF MCKAY RESERVOIR.— The Sec-
21 retary shall operate McKay Reservoir in accordance with
22 Federal and State law and water rights filed pursuant to
23 State law. The Secretary is authorized to continue to des-
24 ignate and deliver McKay Reservoir water for Umatilla
25 River fishery purposes. This title shall not alter any par-

1 ty's rights or obligations under existing contracts for
 2 McKay Reservoir water.

3 “(c) OPERATION AND MAINTENANCE COSTS.—All ex-
 4 change system operation and maintenance costs and any
 5 increased operation and maintenance costs to the project
 6 caused by the phase III exchange shall be the responsibil-
 7 ity of the Federal Government and shall be nonreimburs-
 8 able.

9 “(d) POWER FOR PROJECT PUMPING.—The Adminis-
 10 trator of the Bonneville Power Administration, consistent
 11 with provisions of the Columbia River Basin Fish and
 12 Wildlife Program established pursuant to the Pacific
 13 Northwest Electric Power Planning and Conservation Act
 14 (94 Stat. 2697), shall provide for project power needed
 15 to effect the phase III water exchange for purposes of
 16 mitigating anadromous fishery resources. The cost of
 17 power shall be credited to fishery restoration goals of the
 18 Columbia River Basin Fish and Wildlife Program.

19 “UMATILLA BASIN PROJECT BOUNDARY ADJUSTMENT

20 “SEC. 216. (a) Upon enactment of the Umatilla
 21 Basin Project Completion Act, the boundaries of the three
 22 irrigation districts with functioning Columbia River water
 23 exchange facilities are adjusted by operation of law as fol-
 24 lows:

1 “(1) Hermiston Irrigation District’s boundaries
2 are adjusted to include the 1,091 acres identified in
3 its 1993 request to the Bureau of Reclamation.

4 “(2) Stanfield Irrigation District’s boundaries
5 are adjusted to include the 230.99 acres receiving
6 water under 1995 and 1996 temporary contracts
7 with the Bureau of Reclamation.

8 “(3) West Extension Irrigation District’s
9 boundaries are adjusted to include the 2,436.8 acres
10 identified in its 1993 request to the Bureau of Rec-
11 lamation and are classified as irrigable in the Bu-
12 reau of Reclamation’s Land Classification Report.

13 “(b)(1) When the Umatilla basin project’s phase III
14 exchange is completed and fully functional, the Westland
15 Irrigation District’s boundaries shall be adjusted to in-
16 clude the 7,023 acres receiving water under 1995 and
17 1996 temporary contracts with the Bureau of Reclama-
18 tion: *Provided*, That any analysis required by the National
19 Environmental Policy Act of 1969 on the boundary expan-
20 sion request shall be accomplished in conjunction with
21 similar analysis on the phase III exchange facilities. The
22 Westland Irrigation District shall pay analysis costs asso-
23 ciated with boundary adjustment, not to exceed \$300,000,
24 and any additional costs shall be nonreimbursable.

1 “(2) The Westland Irrigation District’s temporary
2 contract with the Bureau of Reclamation is hereby ex-
3 tended for an additional ten-year period. All other terms
4 of the temporary contract, including the payment, water
5 delivery, and mitigation provisions, shall remain the same.
6 A riparian project, as described in the 1996 temporary
7 contract, will be designed and completed by the Westland
8 Irrigation District. If phase III is not fully functional
9 when this temporary contract, as extended, expires, the
10 Secretary is authorized to enter into additional extensions
11 on such terms and conditions as may be mutually agree-
12 able.

13 “(c) Notwithstanding any other provision of this title,
14 no parcel may receive project water unless it has a valid
15 existing State water right and is classified as irrigable in
16 the Bureau of Reclamation’s Land Classification Report.

17 “(d) Upon approval of each irrigation district’s
18 boundary adjustment request and adjustment of the
19 boundary, a legal description of the new district bound-
20 aries, including land classification and project boundary
21 maps, shall be provided as an attachment to all four irri-
22 gation districts’ existing contracts.

23 “(e) No alteration in the ability to pay determination
24 for the Umatilla River basin project districts may be made

1 as a result of the project boundary expansions authorized
2 by this title.

3 “TREATY OBLIGATIONS

4 “SEC. 217. The Federal Government and the Confed-
5 erated Tribes of the Umatilla Indian Reservation jointly
6 recognize that completion of phase III and perpetual oper-
7 ation of the integrated project, including phases I, II, and
8 III, meets all obligations of the Federal Government to
9 provide the Confederated Tribes of the Umatilla Indian
10 Reservation with water for fishery needs in the Umatilla
11 River below the mouth of McKay Creek, as recognized by
12 their 1855 treaty with the United States.

13 “WATER PROTECTION AND MANAGEMENT

14 “SEC. 218. (a) The Secretary shall continue working
15 in cooperation with the State of Oregon, the Confederated
16 Tribes of the Umatilla Indian Reservation, the irrigation
17 districts, and the affected public toward developing a com-
18 prehensive water management plan to assist in restoring
19 the Umatilla River basin’s anadromous fishery. The Sec-
20 retary shall develop an integrated groundwater/surface
21 water model of the upper Umatilla River basin for use in
22 developing the comprehensive water management plan.

23 “(b) Project facilities and features authorized by this
24 title shall be integrated and coordinated, from an oper-
25 ational standpoint, into existing features of the Umatilla
26 basin project.

1 “(c) The Secretary shall enter into appropriate agree-
 2 ments with the State of Oregon, the relevant irrigation
 3 districts, and the Confederated Tribes of the Umatilla In-
 4 dian Reservation, as appropriate, to provide funding for
 5 monitoring and administration, including regulation, of
 6 project-related water supplies for the purposes herein
 7 identified.

8 “AUTHORIZATION FOR APPROPRIATION

9 “SEC. 219. (a) There is authorized to be appropriated
 10 to the Secretary, plus or minus such amounts as may be
 11 justified by reason of ordinary fluctuations of applicable
 12 cost indexes, the following sums, without fiscal year limita-
 13 tion:

14 “(1) Not to exceed \$71,000,000 for feasibility
 15 studies, environmental studies, and construction of
 16 the phase III exchange: *Provided*, That all costs of
 17 phase III planning and construction, including oper-
 18 ation and maintenance costs allocated to the mitiga-
 19 tion of anadromous fish species and the study au-
 20 thorized in section 215 of this Act, shall be non-
 21 reimbursable: *Provided, further*, That not less than
 22 80 per centum of such funds shall be used for actual
 23 construction.

24 “(2) Not to exceed \$500,000 for the develop-
 25 ment of a comprehensive water management plan

1 and integrated groundwater/surface water model, as
 2 provided for in section 218(a) of this title.

3 ~~“(3) Not to exceed \$400,000 annually for en-~~
 4 ~~forcement and protection of phases I, II, and III of~~
 5 ~~exchange water for instream uses, as provided for in~~
 6 ~~section 218(c) of this title.”.~~

7 WATER RIGHTS

8 SEC. 3. Nothing in this Act shall—

9 (a) impair the validity of or preempt any provi-
 10 sion of State law with respect to water or water
 11 rights, or of any interstate compact governing water
 12 or water rights;

13 (b) create a right to the diversion or use of
 14 water other than as established pursuant to the sub-
 15 stantive and procedural requirements of State law
 16 and as recognized under State law;

17 (c) impair or affect any valid water right; or

18 (d) establish or create any water rights for any
 19 party, nor may any provision be construed to create
 20 directly or indirectly an express or implied Federal
 21 reserved water right for any purpose.

22 *SECTION 1. SHORT TITLE.—This Act may be referred*
 23 *to as the “Umatilla Basin Project Completion Act.”*

24 *SEC. 2. Title II of Public Law 100–557 is amended*
 25 *by adding at the end thereof:*

1 “*SEC. 214. AUTHORIZATION OF PROJECT COMPLE-*
2 *TION.—The Secretary of the Interior (hereinafter referred*
3 *to as the Secretary), acting pursuant to the Federal rec-*
4 *lamation laws (Act of June 17, 1902, and Acts amendatory*
5 *thereof and supplementary thereto), is authorized to com-*
6 *plete construction and to operate and maintain the inte-*
7 *grated Umatilla Basin project, including pump exchange*
8 *projects known as phases I, II, and III, for the purposes*
9 *of completing the Columbia River water exchanges and*
10 *other mitigation efforts necessary to restore the Umatilla*
11 *River Basin fishery, and providing for the expansion of*
12 *Umatilla Basin Irrigation Districts’ boundaries.*

13 “**SEC. 215. UMATILLA BASIN PROJECT PHASE III EXCHANGE.**

14 “(a)(1) *AUTHORIZATION OF PROJECT CONSTRUC-*
15 *TION.—The Secretary is hereby authorized to construct a*
16 *third and final phase of the Umatilla Basin project to pro-*
17 *vide additional flows in the Umatilla River for anadromous*
18 *fish through a water exchange with Westland Irrigation*
19 *District.*

20 “(2) *Prior to construction, the Secretary shall complete*
21 *a feasibility study to identify alternatives to provide*
22 *Westland Irrigation District and other Umatilla River*
23 *Basin water users with exchange flows of approximately*
24 *220 cubic feet per second to restore the Umatilla River fish-*

1 ery, as determined through analysis of options in a feasibil-
2 ity study described in section 215(a)(3).

3 “(3) The feasibility study for the phase III exchange
4 facilities shall examine engineering, environmental, and
5 economic factors associated with project alternatives, in-
6 cluding but not limited to: technical engineering and hydro-
7 logic analyses pertinent to the identification and design of
8 alternatives; biological analyses of instream flow levels to
9 optimize anadromous fish restoration; and an assessment
10 of the cost effectiveness of the alternatives for restoring the
11 Umatilla Basin fishery. The study shall also include an
12 analysis of inclusion of other irrigators in the exchange;
13 consolidation of irrigation delivery facilities; potential for
14 voluntary water transfers; optimization of water delivery
15 scheduling for all four irrigation districts; appropriate
16 backup systems; water conservation opportunities; and such
17 other analyses as the Secretary may deem appropriate to
18 improve the exchange project for fishery restoration pur-
19 poses.

20 “(4) Prior to completion of phase III facilities, the Sec-
21 retary shall negotiate and execute an exchange agreement
22 with the Westland Irrigation District to allow the use of
23 Columbia River water in exchange for an equivalent
24 amount of Umatilla River or McKay Reservoir water: Pro-
25 vided, That the irrigation districts shall continue to be eli-

1 gible to receive the same volume of water as they received
 2 from their Umatilla River water rights and under their re-
 3 spective contracts with the Bureau of Reclamation dated
 4 July 6, 1954 for Hermiston Irrigation District, November
 5 18, 1949 for Stanfield Irrigation District, July 6, 1954 for
 6 West Extension Irrigation District, and November 18, 1949
 7 for Westland Irrigation District. Additional exchange
 8 agreements with other water users may be executed prior
 9 to delivery of water to those entities. The exchange agree-
 10 ments shall incorporate water delivery scheduling
 11 optimization, conservation, water transfer, and other tech-
 12 nical operational measures recommended in the feasibility
 13 study.

14 “(5) Phase III facilities may pump Columbia River
 15 water for exchange purposes only, and not for conjunctive
 16 use.

17 “(b) OPERATION AND MAINTENANCE COSTS.—All ex-
 18 change system operation and maintenance costs and any
 19 increased operation and maintenance costs to the project
 20 caused by the phase III exchange shall be the responsibility
 21 of the Federal Government and shall be nonreimbursable.

22 “(c) POWER FOR PROJECT PUMPING.—The Adminis-
 23 trator of the Bonneville Power Administration (hereinafter
 24 referred to as the Administrator), consistent with provisions
 25 of the Columbia River Basin Fish and Wildlife Program

1 *adopted by the Northwest Power Planning Council pursu-*
2 *ant to the Pacific Northwest Electric Power Planning and*
3 *Conservation Act (94 Stat. 2697), shall provide power need-*
4 *ed to effect the phase III water exchange for purposes of*
5 *mitigating anadromous fishery impacts. Beginning with*
6 *the fiscal year that such power is provided, and continuing*
7 *for so long as it is provided, the Administrator shall apply*
8 *against amounts otherwise payable by the Administrator*
9 *to the United States Treasury a credit that reduces the Ad-*
10 *ministrator's payment by the amount equal to the cost of*
11 *power provided in that year. For purposes of calculating*
12 *that credit, the Administrator shall determine the cost of*
13 *the power so provided by multiplying the amount of the*
14 *power provided by the prevailing priority firm rate, or the*
15 *rate which is then the equivalent of the priority firm rate*
16 *if that designation is no longer used by the Administrator,*
17 *plus applicable transmission charges for priority firm*
18 *power.*

19 “(d) *Project facilities authorized by this title shall be*
20 *integrated and coordinated into the existing Umatilla*
21 *Basin Project.*

1 **“SEC. 216. UMATILLA BASIN IRRIGATION DISTRICTS**
 2 **BOUNDARY ADJUSTMENT.**

3 *“(a) Upon enactment of the Umatilla Basin Project*
 4 *Completion Act, the boundaries of the four irrigation dis-*
 5 *tricts are adjusted by operation of law as follows:*

6 *“(1) Hermiston Irrigation District’s boundaries*
 7 *are adjusted to include the 1,091 acres identified in*
 8 *its 1993 request to the Bureau of Reclamation;*

9 *“(2) Stanfield Irrigation District’s boundaries*
 10 *are adjusted to include the 3,549 acres identified in*
 11 *its 1993 request to the Bureau of Reclamation. Stan-*
 12 *field Irrigation District shall design and complete a*
 13 *riparian project, as described in their temporary con-*
 14 *tract with the Bureau of Reclamation;*

15 *“(3) West Extension Irrigation District’s bound-*
 16 *aries are adjusted to include the 2,436.8 acres identi-*
 17 *fied in the June, 1993 Bureau of Reclamation Land*
 18 *Classification Report as irrigable; and*

19 *“(4) Westland Irrigation District’s boundaries*
 20 *are adjusted to include the 9,912 acres identified in*
 21 *its 1993 request to the Bureau of Reclamation: Pro-*
 22 *vided, That the mitigation provisions included in*
 23 *Westland’s 1996 temporary contract with the Bureau*
 24 *of Reclamation shall remain in force until phase III*
 25 *of the Umatilla Basin Project is constructed, oper-*
 26 *ationally tested, and ready for turnover to operations*

1 *and maintenance status. A riparian project, as de-*
 2 *scribed in the temporary contract, will be designed*
 3 *and completed by the Westland Irrigation District.*

4 *“(b) Notwithstanding any other provision of this Title,*
 5 *no parcel may receive project water unless it has a valid*
 6 *State water right and is classified as irrigable in the Bu-*
 7 *reau of Reclamation’s Land Classification Report.*

8 *“(c) Upon approval of each irrigation district’s bound-*
 9 *ary adjustment request and adjustment of the boundary, a*
 10 *legal description of the new district boundaries, including*
 11 *land classification and project boundary maps, shall be pro-*
 12 *vided as an attachment to all four Irrigation Districts’ ex-*
 13 *isting contracts.*

14 *“(d) No alteration in the ability to pay determination*
 15 *for the Umatilla Basin Project districts may be made as*
 16 *a result of the project boundary expansions authorized by*
 17 *this Title.*

18 **“SEC. 217. WATER PROTECTION AND MANAGEMENT.**

19 *“(a) The Secretary, in cooperation with the Confed-*
 20 *erated Tribes of the Umatilla Indian Reservation (herein-*
 21 *after referred to as the Tribes), shall participate in any dis-*
 22 *cussions with the State of Oregon (hereinafter referred to*
 23 *as the State) regarding the Tribes’ water claims and other*
 24 *water needs in the Umatilla River Basin. To facilitate these*
 25 *discussions of water claims:*

1 “(1) *The Secretary, taking into account the fa-*
2 *cilities and analyses authorized by the Act, shall par-*
3 *ticipate in any efforts undertaken by the State, tribes,*
4 *irrigation districts, Bonneville Power Administration*
5 *and the affected public to develop a water manage-*
6 *ment plan for the Umatilla River Basin. The plan*
7 *shall address restoration of the Umatilla River Basin*
8 *anadromous fishery. The Secretary shall also develop*
9 *an integrated groundwater/surface water model of the*
10 *Upper Umatilla River Basin.*

11 “(2) *Within two years after the date of enact-*
12 *ment of this Act, the Secretary shall report to the*
13 *Committee on Energy and Natural Resources of the*
14 *Senate and the Committee on Resources of the House*
15 *of Representatives on the progress of:*

16 “(A) *the facilities authorized by this Act;*

17 “(B) *the water management plan;*

18 “(C) *the groundwater/surface water model;*

19 *and*

20 “(D) *the status of discussions of Tribal*
21 *water claims in the Umatilla River Basin.*

22 “(b) *The Secretary shall enter into appropriate agree-*
23 *ments with the State, the relevant irrigation districts, and*
24 *the Tribes, as appropriate, to provide funding for monitor-*

1 ing and administration, including regulation, of project-
 2 related water supplies for the purposes herein identified.

3 “SEC. 218. JOINT WATER SUPPLY SYSTEM.—The Sec-
 4 retary is authorized to provide by grant or contract, any
 5 funds appropriated pursuant to Section 219(a)(4) of this
 6 Act, to the tribes for the construction of an offstream storage
 7 reservoir of approximately 10,000 acre-feet capacity, with
 8 associated works. Such authorization shall not include the
 9 purpose of constructing water treatment facilities. Such res-
 10 ervoir is to be located on or adjacent to the Tribes’ Reserva-
 11 tion in Oregon: Provided, that:

12 “(a) the City of Pendleton, Oregon (hereinafter
 13 referred to as the City) agrees to provide up to
 14 \$16,000,000 (in addition to the \$6,500,000 authorized
 15 by this Act for the tribal share of the project) for fea-
 16 sibility level planning and environmental studies and
 17 construction of the reservoir and associated works
 18 provided for by this Section. Any cost overruns be-
 19 yond the \$22,500,000 estimated for the reservoir and
 20 associated works authorized by this Act shall be allo-
 21 cated 70 percent to the city and 30 percent to the
 22 tribes, unless they mutually agree otherwise. In the
 23 event that actual construction of the reservoir and as-
 24 sociated works is not initiated within 24 months of
 25 funds being appropriated pursuant to section

1 219(a)(4), such funds will be returned to the Treas-
2 ury;

3 “(b) the Secretary determines, pursuant to ap-
4 propriate feasibility level planning and environ-
5 mental studies, that the facility can be built and op-
6 erated in a manner which conforms to all applicable
7 Federal, State, and tribal laws and that the project
8 siting and construction minimizes adverse effects on
9 the Umatilla River fishery;

10 “(c) the Secretary, in cooperation with the State
11 and the Tribes, determines that diversions for storage
12 will not reduce Umatilla River flows below the levels
13 necessary to restore and support the Umatilla River
14 anadromous fishery. In diverting water for storage
15 and operation of the reservoir, the tribes and the City
16 may agree to higher levels of protection of instream
17 flows, as may be permitted by State and Federal law.
18 The reservoir shall be filled only during periods of
19 high flow, and in such a manner as to preserve the
20 ecological value of high flow events in the Umatilla
21 River, as determined by Federal, State, and Tribal
22 fishery experts;

23 “(d) the city, subject to applicable Federal, State,
24 and tribal laws, shall use all of its water rights to the
25 Umatilla River and its tributaries with priority dates

1 *after January 1, 1910, including those rights identi-*
 2 *fied in Oregon Revised Statutes 538.450, for instream*
 3 *flow purposes to improve the Umatilla River anad-*
 4 *romous fishery, provided that adequate water from*
 5 *the reservoir project is available for municipal use;*

6 *“(e) the city and the tribes shall be responsible*
 7 *for operation and maintenance of the reservoir and*
 8 *associated works and shall share all operation and*
 9 *maintenance costs on a pro rata basis, determined by*
 10 *the amount of water in the reservoir set aside for each*
 11 *Government’s use, unless the city and the tribes mutu-*
 12 *ally agree to an alternative cost allocation; and*

13 *“(f) the Secretary may direct that funds author-*
 14 *ized under Section 219(a)(4) be contracted to the*
 15 *tribes, under the provision of the Indian Self-Deter-*
 16 *mination and Education Assistance Act, 25 U.S.C.*
 17 *§ 450 et seq., as amended.*

18 **“SEC. 219. AUTHORIZATION OF APPROPRIATIONS.**

19 *“(a) There are authorized to be appropriated to*
 20 *the Secretary, plus or minus such amounts as may be*
 21 *justified by reason of ordinary fluctuations of appli-*
 22 *cable cost indexes, the following sums, without fiscal*
 23 *year limitation:*

24 *“(1) not to exceed \$64,000,000 for feasibility*
 25 *studies, environmental studies, and construction of*

1 *the Phase III Exchange: Provided, That all costs of*
 2 *phase III planning and construction, including oper-*
 3 *ation and maintenance costs allocated to the mitiga-*
 4 *tion of anadromous fish species and the study author-*
 5 *ized in Section 215 of this Act, shall be nonreimburs-*
 6 *able; Provided further, That not more than 25 percent*
 7 *of the amount appropriated under this paragraph*
 8 *may be expended for administrative overhead costs;*

9 *“(2) not to exceed \$500,000 for a water manage-*
 10 *ment plan and an integrated groundwater/surface*
 11 *water model, as provided for in section 217(a) of this*
 12 *title;*

13 *“(3) not to exceed \$400,000 annually for enforce-*
 14 *ment and protection of phases I, II, and III exchange*
 15 *water for instream uses, as provided for in Section*
 16 *217(b) of this title; and*

17 *“(4) not to exceed \$6,500,000 for feasibility stud-*
 18 *ies, environmental studies, and construction of the*
 19 *tribes’ portion of an off stream storage reservoir and*
 20 *associated works, as authorized in section 218 of this*
 21 *title.”.*

22 *SEC. 3. WATER RIGHTS.—Nothing in this Act shall—*

23 *“(a) impair the validity of or preempt any provision*
 24 *of State law with respect to water or water rights, or of*
 25 *any interstate compact governing water or water rights;*

1 “(b) create a right to the diversion or use of water other
 2 than as established pursuant to the substantive and proce-
 3 dural requirements of State law and as recognized under
 4 State law;

5 “(c) impair any valid water right; or

6 “(d) establish or create any water rights for any party,
 7 nor may any provision be construed to create directly or
 8 indirectly an express or implied Federal reserved water
 9 right for any purpose.

10 SEC. 4. SENSE OF THE CONGRESS.—It is the sense and
 11 expectation of the Congress that construction and operation
 12 of phase III, the perpetual operation of the integrated
 13 Umatilla Basin project, and the construction and operation
 14 of the Joint Water Supply System, as authorized in section
 15 218 of this Act, will fulfill obligations of the Federal Gov-
 16 ernment to provide the Confederated Tribes of the Umatilla
 17 Indian Reservation with water for fishery purposes in the
 18 Umatilla River below the mouth of McKay Creek, as recog-
 19 nized by their 1855 treaty with the United States: Provided,
 20 That fulfillment of obligations is contingent upon an agree-
 21 ment between the United States, the tribes, and the State
 22 as to the instream flow levels necessary for fishery restora-
 23 tion, and that the design and operation of the integrated
 24 Umatilla Basin project, as determined by the feasibility

- 1 *study required in section 215(a)(3) of this Act, will allow*
- 2 *such instream flow levels to be achieved.*